

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1734 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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VANITA VISHRAM

Versus

JIVANBHAI GOVINDBHAI DIED THROUGH HIS HERIS

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Appearance:

MR SN SHELAT for Petitioner  
SERVED for Respondent No. 1

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CORAM : MR.JUSTICE N.N.MATHUR  
Date of decision: 15/12/97

ORAL JUDGEMENT

This Revision Application under section 29 of the Bombay Rent, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as 'the Bombay Rent Control Act, 1947) has been filed by the original plaintiff challenging the judgment and decree passed by the Extra Asstt. Judge, Surat dated 18.3.1980 whereby the decree passed by the trial court has been set aside and

the plaintiff's suit for possession of the suit premises has been dismissed.

2. The plaintiff-Vanita Vishram is said to be a Public Trust, registered under Indian Companies Act. The suit was filed for recovery of possession through one Batuklal Jivanlal Naik claiming to be the Power of Attorney holder of the Trust. The plaintiff's case is that the deceased-Jivanbhai Govindji was in service of the plaintiff-Trust and he was given on lease land admeasuring 12' x 20' with structure standing thereon on a monthly rent of Rs.4/- per month. The said structure collapsed in rain and cyclone and the tenancy of the defendant came to an end. It is alleged that the deceased defendant raised permanent structure by constructing a room in the area of 29 1/2' x 25'. The deceased defendant filed written statement and denied that the suit property was let out to him as servant. He contended that his father Govindbhai was supervising agriculture of the plaintiff-institution and so in return, the subject land with the structure thereon was given to him for residence. His father died about 20 years back and since then the plaintiff-institution let out the premises to him on a monthly rent of Rs.4/-. He also stated that he raised new structure with the permission of the plaintiff No.3-Secretary. He admitted that the original structure fell down due to rain and cyclone, but according to him, the tenancy is not terminated on that ground. He also stated that after the structure having fallen on account of rain and cyclone, he had approached the Secretary of the Trust, who instructed him to construct the structure at his own cost and he would be reimbursed subsequently. After the death of the original defendant, his legal representatives were taken on record who are the respondents in the present Revision Application. The legal representatives also filed written statement Exh. 20. The trial court framed 9 issues. The Court held that the premises were let out to Govindbhai on account of the employment with the plaintiff-institution. The trial court decreed the suit by judgment and decree dated 29.9.1978. The Appellate Court upheld the contention of the defendant-appellant that the suit was not maintainable at the instance of Batukhlal Jivanbhai alone as one of the Trustees. He had no authority to file the suit in absence of Power of Attorney authorising him to file the suit. The contention of the plaintiff that the Trust being a registered Trust, as per the Indian Companies Act, the suit could have been filed through its Secretary. However, the Articles of Association of the Company or registration certificate has not been produced. It is

contended by Mr Nagarkar, learned Advocate for the petitioner that the learned Judge has committed error in entertaining such contentions not taken by the defendant in the written statement. He further submits that no such issue was raised before the trial court. There is no substance in the contention raised by Mr Nagarkar. A reading of the judgment clearly shows that not only that the issue was raised, but opportunity was also given to the plaintiff to produce Power of Attorney or Articles of Association. Neither the Article of Association of the Company or the registration certificate was produced.

3. In view of this, in my opinion, the learned Judge was right in rejecting the plaintiff's suit on the ground that it was not maintainable at the instance of one of the Trustees who was not authorised by the Trust to file the suit. The learned Appellate Court has upturned the judgment of the trial court on other grounds as well. I find that the suit itself was not maintainable at the instance of one of the Trustees who was not authorised by the Trust, and as such it is not necessary to deal with the findings on other issues.

4. In view of the aforesaid, there is no merit in this Revision Application and the same is accordingly rejected. Rule discharged.

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msp.